

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JARROD ANDREW BEAN,
Appellant.

No. 2 CA-CR 2018-0288
Filed November 19, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20163118001
The Honorable Michael J. Butler, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
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Counsel for Appellee

Joel Feinman, Pima County Public Defender
By Erin K. Sutherland, Assistant Public Defender, Tucson
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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Jarrod Bean was convicted of possession of a dangerous drug and possession of drug paraphernalia. The trial court suspended the imposition of sentence and placed Bean on probation for concurrent terms of two years. On appeal, Bean challenges the sufficiency of the evidence supporting his convictions, arguing the state failed to establish that he knew the substance he possessed was a dangerous drug. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding Bean's convictions. *See State v. Allen*, 235 Ariz. 72, ¶ 2 (App. 2014). Early one morning in June 2016, officers responded to an area in South Tucson, where they found Bean in the middle of the street, wearing only underwear and a thick metal cuff on each wrist. The officers noticed what appeared to be methamphetamine in baggies protruding from each of the cuffs. When the officers asked about the baggies, Bean said it was "crystal method." Bean told the officers there was a "big difference" between "meth," which according to the officers is a slang term for methamphetamine, and "crystal method." Later, an officer asked, "Isn't crystal method a band?" And Bean responded, "Crystal method's a deejay." Subsequent testing confirmed that the substance in the baggies was methamphetamine, weighing a total of 3.046 grams.

¶3 A grand jury indicted Bean for possession of a dangerous drug (methamphetamine) and possession of drug paraphernalia (baggie). He was convicted as charged, and the trial court imposed probation as described above. We have jurisdiction over this appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Sufficiency of the Evidence

¶4 Bean argues the state presented insufficient evidence to support his convictions. We review de novo the sufficiency of the evidence.

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State v. Snider, 233 Ariz. 243, ¶ 4 (App. 2013). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, ¶ 16 (2011) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). We will reverse only if no substantial evidence supports the conviction. *State v. Rivera*, 226 Ariz. 325, ¶ 3 (App. 2011). “Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” *Id.* (quoting *State v. Spears*, 184 Ariz. 277, 290 (1996)). Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

Possession of a Dangerous Drug

¶5 Bean argues the state “presented no evidence that [he] knew the substance he possessed was methamphetamine.” He points out that he told the officers the substance in the baggies was “crystal method,” which he said was different from “crystal meth.” Bean thus maintains that the state failed to present sufficient evidence supporting his conviction for possession of a dangerous drug.

¶6 The offense of possession of a dangerous drug requires proof that the defendant “knowingly” possessed a dangerous drug. A.R.S. § 13-3407(A)(1); *see also State v. Fierro*, 220 Ariz. 337, ¶ 5 (App. 2008) (to support a conviction under A.R.S. § 13-3405, state had to prove defendant’s knowledge of drug). Methamphetamine is a dangerous drug. A.R.S. § 13-3401(6). “‘Knowingly’ means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists.” A.R.S. § 13-105(10)(b). A defendant’s knowledge “will rarely be provable by direct evidence and the jury will usually have to infer it from his behaviors and other circumstances surrounding the event.” *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996). That said, “guilty knowledge cannot rest on mere supposition.” *State v. Hull*, 60 Ariz. 124, 128 (1942).

¶7 As Bean recognizes, “Arizona courts have found sufficient evidence to prove knowledge of the nature of the substance being possessed in a number of circumstances.” But, according to Bean, unlike here, in each of those cases, “there was always something more than mere

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possession of a personal use amount of drugs.”¹ For example, as Bean points out, the following factors have previously been found sufficient to allow an inference of knowledge: a large quantity of drugs in the same vehicle as the defendant, *State v. Teagle*, 217 Ariz. 17, ¶ 44 (App. 2007), attempting to dispose of the drugs upon contact with officers, *State v. Martinez*, 15 Ariz. App. 10, 11-12 (1971), recent prior convictions for possession of the same substance, *State v. Hines*, 130 Ariz. 68, 73 (1981), and evidence of “trackmarks” indicating prior drug use, *State v. Mosley*, 119 Ariz. 393, 399 (1978). Admittedly, none of these factors were present in this case. However, there was nevertheless “something more” presented, sufficient to support the inference that Bean knew the substance was a dangerous drug.² See *Noriega*, 187 Ariz. at 286.

¶8 At trial, the officers testified that when they asked about the substance, Bean said it was “crystal method.” The officers explained that “crystal meth” is a slang term for methamphetamine. A video of the incident that was admitted at trial showed the substance was concealed in baggies under the cuffs on Bean’s wrists. See *State v. Grijalva*, 8 Ariz. App. 205, 208 (1968) (sufficient evidence of knowledge that goods were stolen given “unusual hiding place of the goods, together with the furtive manner in which they were placed there”). A criminalist testified that the baggies contained approximately three grams of methamphetamine, which according to the officers, was worth approximately \$120. See *State v. Cheramie*, 218 Ariz. 447, ¶ 21 (2008) (“[E]stablishing a ‘usable quantity’ remains an effective way, in a case involving such a small amount that one might question whether the defendant knew of the presence of drugs, to

¹As part of his argument, Bean relies on our unpublished decision in *State v. Johansen*, No. 1 CA-CR 14-0727, ¶¶ 11-12 (Ariz. App. Nov. 17, 2015) (mem. decision). However, that decision is not binding here. See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e). In any event, we find this case distinguishable. For the reasons stated below, this case includes the “something more” that *Johansen* lacked. See *Johansen*, No. 1 CA-CR 14-0727, ¶ 15.

²Bean suggests that if we were to find the evidence in this case sufficient to establish possession of a dangerous drug, we would “pragmatically create a mandatory rebuttable presumption” in favor of the state, requiring “the defendant to prove that he did not know of the nature of the substance.” However, we disagree because the state must present sufficient evidence allowing the jury to infer the defendant’s knowledge of the substance. See *Pena*, 209 Ariz. 503, ¶ 7; *Noriega*, 187 Ariz. at 286.

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show that the defendant ‘knowingly’ committed the acts described in A.R.S. § 13-3407.”).

¶9 Although Bean suggested that “crystal method” was different from “meth,” he also said “crystal method” was a deejay, not another type of substance. *See State v. Hull*, 60 Ariz. 124, 128 (1942) (“false, evasive or contradictory statements by the accused” may be used to show knowledge that goods were stolen). Accordingly, the state presented sufficient evidence to support Bean’s conviction for possession of a dangerous drug. *See Snider*, 233 Ariz. 243, ¶ 4.

Possession of Drug Paraphernalia

¶10 Bean also argues that the state presented insufficient evidence to support his conviction for possession of drug paraphernalia. He reasons, “Because the State presented insufficient evidence that [he] knew that the substance he possessed was a dangerous drug, it likewise failed to present sufficient evidence that he possessed drug paraphernalia, because he did not knowingly intend for the baggie to package, store, contain, or conceal a dangerous drug.”

¶11 The offense of possession of drug paraphernalia requires proof that the defendant used or possessed with the intent to use “drug paraphernalia to . . . pack, repack, store, contain, [or] conceal” a dangerous drug. A.R.S. § 13-3415(A), (F)(1); *see also* § 13-105(34) (“‘Possess’ means knowingly to have physical possession or otherwise to exercise dominion or control over property.”). “‘Drug paraphernalia’ means all equipment, products and materials of any kind which are used, intended for use or designed for use in . . . packaging, repackaging, storing, containing, [or] concealing.” § 13-3415(F)(2).

¶12 Because Bean’s argument regarding his conviction for possession of drug paraphernalia depends entirely on the merit of his prior argument regarding his conviction for possession of a dangerous drug, which we have rejected, we likewise reject this argument. As explained above, the state presented sufficient evidence to permit the jury to infer that Bean knowingly possessed a dangerous drug. And Bean does not dispute that he possessed the baggies or that the baggies contained methamphetamine. Indeed, video of the incident and the trial testimony establish otherwise. Accordingly, the state presented sufficient evidence to support Bean’s conviction for possession of drug paraphernalia. *See Snider*, 233 Ariz. 243, ¶ 4.

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Disposition

¶13 For the reasons stated above, we affirm Bean's convictions and sentences.